



## The Office of Secretary of State

*Brian P. Kemp*  
SECRETARY OF STATE

*Vincent R. Russo*  
General Counsel

### NOTICE (SEC-2011-11)

**RE: Adoption of Chapter 590-4-3 entitled “Registration Of Securities” Consisting of Rules 590-4-3-.01 through 590-4-3-.13**

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 10-5-70 and 50-13-4, notice is hereby given that the Commissioner of Securities of the Office of the Georgia Secretary of State, (hereinafter “Commissioner”) proposes to adopt Chapter 590-4-3 entitled “Registration Of Securities”. The proposed rules for adoption contained in Chapter 590-4-3 include the following: 590-4-3-.01 “Filing of Original Registration Statement; Power of Attorney”, 590-4-3-.02 “Determination of Filing Date; Abandonment of Registration Statements”, 590-4-3-.03 “Paper, Printing, and Language”, 590-4-3-.04 “Contents of Registration Statements”, 590-4-3-.05 “General Requirements of Prospectus”, 590-4-3-.06 “Delivery and Contents of Prospectus”, 590-4-3-.07 “Amendments to Registration Statements”, 590-4-3-.08 “Petition for Waiver or Modification of Requirements”, 590-4-3-.09 “Issuer’s Quarterly and Annual Reports”, 590-4-3-.10 “Financial Statements”, 590-4-3-.11 “Renewals of Registration Statements”, 590-4-3-.12 “Filing of Sales and Advertising Literature Relating to Securities Offerings Registered by Qualification”, and 590-4-3-.13 “Escrow and Impoundment of Proceeds”.

Attached with this notice is a synopsis and exact copy of each proposed rule to be adopted. The rules are being adopted under the authority of O.C.G.A. §§ 10-5-70 and 10-5-74. The Commissioner finds that the adoption of the attached rules is necessary and in the public interest as a result of the enactment of the Georgia Uniform Securities Act of 2008.

The Assistant Commissioner, in accordance with O.C.G.A. § 10-5-70(f), shall consider the adoption of the proposed rules at 10:45 a.m., on November 17, 2011, in Room 810, Suite 802 West Tower at 2 Martin Luther King, Jr. Drive, S.E., Atlanta, Georgia 30334.

Copies of this notice, including the synopsis and exact copy of each proposed rule, are available for review on the Securities Divisions’ web page at <http://www.sos.ga.gov/securities>. Interested persons may submit data, views or arguments in writing to the Commissioner. The Commissioner must receive all comments regarding the proposed rules from interested persons no later than 5:00 p.m. on November 15, 2011. Written comments may be mailed to:

Commissioner of Securities, Securities Division, 2 Martin Luther King, Jr. Drive, S.E., 802 West Tower, Atlanta, Georgia 30334. Written comments may be sent via facsimile to (404) 656-0513, or submitted via email to [SECRules@sos.ga.gov](mailto:SECRules@sos.ga.gov). Please reference "SEC-2011-11" on all comments.

For further information, please contact Tom Zagorsky at (404) 463-0344.

This 13th day of October, 2011.



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Vincent R. Russo  
Interim Assistant Commissioner of Securities

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.01 ENTITLED  
“FILING OF ORIGINAL REGISTRATION STATEMENT; POWER OF  
ATTORNEY”BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF THE  
GEORGIA SECRETARY OF STATE**

Synopsis:

The following provisions apply generally to the registration of securities in Georgia in addition to any requirements found elsewhere in the Georgia Uniform Securities Act or these rules. The purpose for adopting Rule 590-4-3-.01 is to provide by rule for the procedure for executing a completed securities registration statement.

Main Features:

The completed registration statement shall be executed by either the applicant, an authorized officer of the applicant or pursuant to a power of attorney. Additionally, the completed registration statement may be filed electronically on a form adopted by the Commissioner.

Text of Rule:

**590-4-3-.01 Filing of Original Registration Statement; Power of Attorney.**

(1) The completed registration statement, together with exhibits and all other documents included as a part thereof, shall be submitted to the Commissioner.

(2) The registration statement shall be completed by the Applicant or an authorized Officer of an Applicant.

(3) If any name is signed on a registration statement pursuant to a power of attorney, then copies of the power of attorney shall be filed with the Commissioner, together with the registration statement. In addition, if the name of any Officer signing such registration statement on behalf of the Applicant or attesting the Applicant's seal is signed pursuant to a power of attorney, then certified copies of a resolution of the Applicant's board of directors authorizing the signature shall also be filed with the Commissioner together with such registration statement.

(4) The completed registration statement, together with exhibits and all other documents included as a part thereof, required by this Rule may be made electronically on a form adopted by the Commissioner.

Authority: O.C.G.A. Secs. 10-5-24, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.02 ENTITLED  
“DETERMINATION OF FILING DATE; ABANDONMENT OF REGISTRATION  
STATEMENTS” BY THE COMMISSIONER OF SECURITIES OF THE OFFICE OF  
THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.02 is to provide by rule for the conditions necessary for a registration statement to be deemed filed by the Commissioner and the procedure when a deficiency in a filing occurs. .

Main Features:

The Commissioner will not file a registration statement if the required filing fees are not included with the registration statement. If a deficiency is not corrected within thirty (30) days, the registration statement will be deemed abandoned. The Assistant Commissioner is provided the authority granted the Commissioner and may act concurrently with the Commissioner.

Text of Rule:

**590-4-3-.02 Determination of Filing Date; Abandonment of Registration Statements.**

(1) A registration statement required by Section 10-5-22 or 10-5-23 of the Act is considered filed when the Commissioner receives the registration statement and required filing fees, as prescribed from time to time by order of the Commissioner.

(2) Any registration statement filed pursuant to Section 10-5-22 or 10-5-23 of the Act is deficient if any of the following conditions exist:

- (a) The registration statement is not in proper form;
- (b) The registration statement does not comply with the applicable provisions of Section 10-5-22, 10-5-23, 10-5-24 or any other provision of the Act; or
- (c) The registration statement does not comply with any other applicable state or federal law, statute, rule or regulation.

(3) When a registration statement is found to be deficient, the Commissioner may send a deficiency letter notifying the Applicant of such deficiencies. The registration statement shall be deemed to be abandoned by the Applicant without further action by the Commissioner if the Applicant fails to amend the registration statement to address such deficiencies within thirty (30) days following the date of such deficiency letter.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.03 ENTITLED  
“PAPER, PRINTING, AND LANGUAGE” BY THE COMMISSIONER OF SECURITIES  
OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The objective for adopting Rule 590-4-3-.03 is to establish standardized paper, printing and language requirements for the registration statement, prospectus and other documents filed therewith.

Main Features:

The main features of this rule include the size and character of the font and the requirement that the registration statement be in English.

Text of Rule:

**590-4-3-.03 Paper, Printing, and Language.**

(1) Unless otherwise permitted by the Commissioner, the registration statement and all papers and documents filed as a part thereof shall be in times new roman type or its substantial equivalent, at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in times new roman type or its substantial equivalent at least as large and as legible as 8-point modern type.

(2) The registration statement shall be in the English language. If any exhibit or other document filed with the registration statement is in a foreign language, it shall be accompanied by a translation into the English language accompanied by a sworn affidavit attesting to the accuracy of the translation.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.04 ENTITLED  
“CONTENTS OF ALL REGISTRATION STATEMENTS” BY THE COMMISSIONER  
OF SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The following provisions shall apply generally to the registration of securities in Georgia in addition to any requirements found elsewhere in the Georgia Uniform Securities Act or these rules. The purpose for adopting Rule 590-4-3-.04 is to provide by rule for the contents of all registration statements to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets.

Main Features:

The main features of this rule require the filing of Form U-1 as the registration statement for a registration by qualification. An electronic form containing substantially similar disclosures may be permitted by order of the Commissioner. Additionally, if provided for by order of the Commissioner, a copy of the most recently filed Form D, as filed with the SEC, may be used as the registration statement for securities offered or sold in compliance with SEC Rule 504 adopted pursuant to the Securities Act of 1933 or Section (4)(5), 15 U.S.C. § 77d(5), of the Securities Act of 1933.

Text of Rule:

**590-4-3-.04 Contents of Registration Statements.**

(1) Except as provided in subsection (2) of this Rule, every registration statement filed under Section 10-5-22 or Section 10-5-23 of the Act shall be on Form U-1, as made available on NASAA’s website, or electronically in a form containing substantially similar disclosures, as permitted by order of the Commissioner.

(2) The registration statement to be filed under Section 10-5-23 of the Act in connection with any offer or sale of securities offered or sold in compliance with SEC Rule 504 adopted pursuant to the Securities Act of 1933 or Section (4)(5), 15 U.S.C. § 77d(5), of the Securities Act of 1933, and for which a Form D has been filed with the SEC shall consist of the most recently filed Form D, as filed with the SEC, in lieu of the registration statement required in subsection (1) of this Rule. A filing under this subsection shall be made electronically, as permitted by order of the Commissioner.

Authority: O.C.G.A. Secs. 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.05 ENTITLED  
“GENERAL REQUIREMENTS OF PROSPECTUS” BY THE COMMISSIONER OF  
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.05 is to provide by rule for general requirements for every prospectus filed with the Commissioner.

Main Features:

The main feature of this rule is the requirement that the prospectus include all material information not expressly required that, under the circumstances, is necessary for the evaluation of the offered security and to prevent the prospectus from containing misleading information.

Text of Rule:

**590-4-3-.05 General Requirements of Prospectus.**

The following general requirements shall apply to every prospectus required to be filed with the Commissioner, unless otherwise provided for.

(1) Unless otherwise permitted by the Commissioner, the body of the prospectus and all notes to financial statements and other tabular data included therein shall be in times new roman type or its substantial equivalent, at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in times new roman type or its substantial equivalent, at least as large and as legible as 8-point modern type. A prospectus in the final form approved by the Commissioner shall be deemed to have met all requirements of this subsection.

(2) Photographs or conceptions or renderings by artists, architects or engineers are only permitted to be included in a prospectus to the extent they are necessary for a fair understanding of the subject and provided that such photographs, conceptions and renderings are not misleading. Accurate maps or surveys are permissible where appropriate. Established corporate symbols or trademarks may be used, provided they do not create misleading impressions.

(3) The information set forth in a prospectus should be presented in a clear and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections. The information required in a prospectus need not follow the order of the items or topics set forth in these rules. The information shall not, however, be set forth in a manner that obscures any of the required information or any information necessary to keep the required information from being incomplete or misleading.

(4) The prospectus shall include all material information not expressly required that is necessary under the circumstances to make the statements not misleading and shall include all information material to an evaluation of the offered security.

Authority: O.C.G.A. Secs. 10-5-53, 10-5-70, 10-5-74.



**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.06 ENTITLED  
“DELIVERY AND CONTENTS OF PROSPECTUS” BY THE COMMISSIONER OF  
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.06 is to provide by rule for the contents and delivery of the prospectus to be used in connection with a registration statement filed under O.C.G.A. §§ 10-5-22 and 10-5-23.

Main Features:

Unless otherwise exempt, each registration statement filed under the Act must include the prospectus to be used in connection with the proposed offering. For an offering made pursuant to a registration by qualification, the prospectus must be delivered to the prospective purchaser before the sale of the securities, and each subscription agreement must contain a statement by the purchaser that the purchaser has received a copy of the prospectus. If the proposed registration by qualification is made in compliance with Regulation A under the Securities Act of 1933, then the information in the prospectus required by this rule shall be the information required by the then current version of Form 1-A under Regulation A. If the proposed registration by qualification is made in compliance with SEC Rule 504 adopted pursuant to the Securities Act of 1933 or Section 4(5) the Securities Act of 1933, then the current version of Form U-7 (Small Company Offering Registration Form) shall be used as the prospectus.

For an offering made pursuant to a registration by coordination, a prospectus shall be delivered as required by the Securities Act of 1933 and must include the information required in Part I of the registration statement filed (or to be filed) by the issuer under the Securities Act of 1933.

Text of Rule:

**590-4-3-.06 Delivery and Contents of Prospectus.**

(1) Filing. Each registration statement filed under the Act shall include a prospectus to be used in connection with the proposed securities offering.

(2) Prospectus Delivery Requirements. As a condition of registration, an Applicant shall comply with the following:

(a) A person offering or selling a security under a registration statement filed pursuant to Section 10-5-23 of the Act shall deliver a copy of the final prospectus to each prospective purchaser before the confirmation of a sale made by or for the account of the person. Each subscription agreement shall contain a statement by the purchaser that the purchaser has received a copy of the prospectus.

(b) A person offering or selling a security under a registration statement filed pursuant to Section 10-5-22 of the Act shall deliver a copy of the prospectus as and to the extent required by the Securities Act of 1933.

(3) Form and Content.

(a) General Requirements. Each prospectus required to be included in a registration statement pursuant to this Rule shall satisfy the requirements of Rule 590-4-3-.05, unless the Commissioner waives or modifies such requirements.

(b) Registration by Coordination. Each prospectus included in a registration statement filed pursuant to Section 10-5-22 of the Act shall include the information required in Part I of the registration statement filed (or to be filed) by the issuer under the Securities Act of 1933 relating to such proposed securities offering, unless the Commissioner waives or modifies such requirements pursuant to Section 10-5-26 of the Act.

(c) Registration by Qualification. Each prospectus included in a registration statement filed pursuant to Section 10-5-23 of the Act, including a prospectus that forms a part of a registration statement filed pursuant to Rule 590-4-3-.04(2), shall include the following information as applicable, unless the Commissioner waives or modifies such requirements pursuant to Section 10-5-26 of the Act:

1. If the proposed offering to be registered under Section 10-5-23 of the Act is made in compliance with Regulation A under the Securities Act of 1933, then the information in the prospectus required by this rule shall be the information required by the then current version of Form 1-A under Regulation A;

2. If the proposed offering to be registered under Section 10-5-23 of the Act is made in compliance with SEC Rule 504 adopted pursuant to the Securities Act of 1933 or Section 4(5), 15 U.S.C. § 77d(5), of the Securities Act of 1933, then the information in the prospectus required by this rule shall be in the information required by the then current version of Form U-7 (Small Company Offering Registration Form), available on NASAA's website; or

3. In all other cases, such information as may be ordered by the Commissioner.

Authority: O.C.G.A. Secs. 10-5-23, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.07 ENTITLED  
“AMENDMENTS TO REGISTRATION STATEMENTS” BY THE COMMISSIONER  
OF SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.07 is to provide by rule for the filing of an amendment to a registration statement. When any statement in a registration statement becomes materially inaccurate or misleading, an amendment should be filed with the Commissioner within five days thereafter.

Main Features:

The main features of this rule require the amendment of an effective registration statement within five days of any statement in the registration statement becoming materially inaccurate or misleading. The amendment must include a sworn statement of the changes in the circumstances and the amendments necessary to render such registration statement complete and accurate and not misleading.

Text of Rule:

**590-4-3-.07 Amendments to Registration Statements.**

If at any time during which a registration statement is effective under the Act, any statement contained in such registration statement becomes materially inaccurate or misleading as of that time, then the Applicant shall within five (5) days thereafter file with the Commissioner a sworn statement of the changes in the circumstances and the amendments necessary to render such registration statement complete and accurate and not misleading. The sworn statement of changes shall become a part of such registration statement. Within five (5) days thereafter, the Commissioner shall determine whether to order that such statement of the changes be included in the prospectus under Rules 590-4-3-.05 and 590-4-3-.06. If the Commissioner so orders, such statement of changes shall be included into such prospectus by way of addendum or supplement and delivered pursuant to Rule 590-4-3.06(2).

Authority: O.C.G.A. Secs. 10-5-53, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.08 ENTITLED  
“PETITION FOR WAIVER OR MODIFICATION OF REQUIREMENTS” BY THE  
COMMISSIONER OF SECURITIES OF THE OFFICE OF THE GEORGIA  
SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.08 is to provide by rule for the procedure to petition the Commissioner for a waiver or modification of the requirements of Code Sections 10-5-21, 10-5-22, and 10-5-23 or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to subsection (i) of Code Section 10-5-24.

Main Features:

The petition must be sworn, describe the requirements sought to be waived or modified, and state the basis for the applicant's belief that the waiver or modification is consistent with the protection of investors. If the Commissioner concludes such waiver or modification is permitted by Section 10-5-26 of the Act and is consistent with the protection of investors, he/she may grant the waiver or modification so requested by the Applicant if the Commissioner.

Text of Rule:

**590-4-3-.08 Petition for Waiver or Modification of Requirements.**

(1) An Applicant may petition the Commissioner to exercise his or her authority under Section 10-5-26 of the Act to waive or modify any of the requirements permitted to be so waived or modified pursuant to Section 10-5-26 of the Act. Such petition shall:

- (a) Be sworn;
- (b) Describe the requirements that the Applicant seeks be waived or modified and the requested waiver or modification thereof; and
- (c) State the basis for the Applicant's belief that such waiver or modification is consistent with the protection of investors.

(2) Based on the representations set forth in such petition and only to the extent that such representations are true and complete, the Commissioner may grant the waiver or modification so requested by the Applicant if the Commissioner concludes such waiver or modification is permitted by Section 10-5-26 of the Act and is consistent with the protection of investors.

(3) The Commissioner may decline to rule on any petition filed under this Rule 590-4-3-.08.

Authority: O.C.G.A. Secs. 10-5-26.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.09 ENTITLED  
“ISSUER’S QUARTERLY AND ANNUAL REPORTS” BY THE COMMISSIONER OF  
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.09 is to require issuers who have registered securities in Georgia through a registration by qualification to file financial statements with the Commissioner for a period of twelve months following the effective date of the registration statement and any renewal periods.

Main Features:

Quarterly financial statements must be filed within sixty days from the close of each fiscal quarter of the issuer, and annual financial statements must be filed within ninety days from the close of the issuer's fiscal year. The financial statements filed with the Commissioner must be delivered to each investor in this State who purchased securities pursuant to the registration statement. Additionally, this Rule provides for the electronic transmission of the financial statements.

Text of Rule:

**590-4-3-.09 Issuer’s Quarterly and Annual Reports.**

(1) In addition to the financial statements required to be filed pursuant to Section 10-5-23 of the Act, every issuer who has registered securities for sale in this state pursuant to Code Section 10-5-23 of the Act shall, for a period of twelve (12) months following the effective date of such registration statement, or any renewals thereof, file with the Commissioner:

(a) Within sixty (60) days of the close of each fiscal quarter of the issuer of the securities registered, except the last fiscal quarter of each fiscal year, the following financial statements:

1. Consolidated statements of financial position (i.e., balance sheet), income, and cash flows of the issuer and its subsidiaries for each fiscal quarter;
2. Consolidated statement of shareholders’ equity for the issuer and its subsidiaries for each such fiscal quarter. Such statement may contain the items specified in Form 10-Q promulgated by the SEC under the Securities Exchange Act of 1934.

(b) Within ninety (90) days of the close of such issuer’s fiscal year the following financial statements:

1. Consolidated statements of financial position (i.e., balance sheet), income, and cash flows for the issuer and its subsidiaries for such fiscal year; and

2. A consolidated statement of shareholders' equity of the issuer and its subsidiaries for each such fiscal year. Such statement may contain the items specified in Form 10-K, promulgated by the SEC under the Securities Exchange Act of 1934.

(c) If a substantial part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements that would be required in subparagraphs (a) and (b) above if that business were the issuer; provided, however, if the issuer does not compile its financial statements in the normal course of its business on a consolidated basis, then it may furnish, in lieu of the consolidated financial statements required in subparagraphs (a) and (b) above and this subparagraph (c), individual financial statements for it and its majority-owned subsidiaries.

(2) The financial statements required by this Rule 590-4-3-.09 to be filed with the Commissioner may be filed electronically, provided that the Commissioner has established procedures for electronic filing.

(3) A copy of each financial statement filed with the Commissioner pursuant to this Rule 590-4-3-.09 shall be delivered promptly following such filing with the Commissioner to each investor in this State who purchased securities pursuant to the registration statement.

Authority: O.C.G.A. Secs. 10-5-24, 10-5-70.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.10 ENTITLED  
“FINANCIAL STATEMENTS” BY THE COMMISSIONER OF SECURITIES OF THE  
OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.10 is to provide by rule for financial statements to be filed in the form required by SEC Regulation S-X and to authorize the Commissioner to permit the omission from filing of financial statements or to require the filing of additional financial statements.

Main Features:

Regulation S-X shall be applied to financial statements.

Text of Rule:

**590-4-3-.10 Financial Statements.**

(a) Except as otherwise expressly provided in Rule 590-4-3-.09, as to definitions, qualifications of accountants, contents of accountant’s certificates, requirements of consolidated or combined statements, and the form and content of financial statements (including any prospective financial statements or pro forma financial statements), the Commissioner shall apply Regulation S-X as adopted by the SEC in its most recent form as of the date of the filing of the registration statement, prospectus or other document containing such financial statements as required by the Act or any rule adopted by the Commissioner thereunder.

(b) The Commissioner may, upon the written request of the Applicant and where consistent with the protection of investors, permit the omission of one or more financial statements required under Rule 590-4-3-.09, or the filing in substitution therefor of an appropriate comparable character. The Commissioner may also, by written notice, require the filing of other financial statements in addition to, or in substitution for, the financial statements in any case where the financial statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

Authority: O.C.G.A. Secs. 10-5-24, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.11 ENTITLED  
“RENEWALS OF REGISTRATION STATEMENTS” BY THE COMMISSIONER OF  
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.11 is to provide by rule for the renewal of a registration statement filed pursuant to the Act for additional one year periods.

Main Features:

In order to renew a registration statement, an updated prospectus containing information as of a date no more than ninety days prior to the filing of the updated prospectus must be filed with the Commissioner together with a renewal fee.

Text of Rule:

**590-4-3-.11 Renewals of Registration Statements.**

A registration statement filed pursuant to the Act may be renewed for additional one year periods if the issuer files with the Commissioner at least thirty (30) days prior to anniversary of effective date of such registration statement an updated prospectus prepared in accordance with the rules adopted by the Commissioner containing information as of a date no more than 90 days prior the filing date thereof together with the renewal fee prescribed by the Commissioner. Unless the Commissioner issues an order specifying otherwise, the renewal of such registration statement becomes effective on the anniversary of expiration of the original registration statement, and such renewed registration statement shall be effective for one year.

Authority: O.C.G.A. Secs. 10-5-24, 10-5-70, 10-5-74.



**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.12 ENTITLED  
“FILING OF SALES AND ADVERTISING LITERATURE RELATING TO  
SECURITIES OFFERINGS REGISTERED BY QUALIFICATION” BY THE  
COMMISSIONER OF SECURITIES OF THE OFFICE OF THE GEORGIA  
SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.12 is to provide by rule for the filing of sales and advertising literature used or proposed to be used in connection with the offer or sale of securities under a registration by qualification.

Main Features:

The sales and advertising literature must be filed at least five business days prior to the issuance, release, circulation or distribution of the sales and advertising literature.

Text of Rule:

**590-4-3-.12 Filing of Sales and Advertising Literature Relating to Securities Offerings Registered by Qualification.**

(1) Except as provided in this Rule, Sales and Advertising Literature used or proposed to be used in connection with the offer or sale of securities registered under Section 10-5-23 of the Act must be filed with the Commissioner at least five (5) business days prior to issuance, release, circulation or distribution thereof.

(2) The following Sales and Advertising Literature are not required to be filed with the Commissioner pursuant to this Rule:

(a) An advertisement, the content of which is limited to the information specified in Rule 134(a) adopted by the SEC under the Securities Act of 1933 and includes a statement that such advertisement does not constitute an offer to sell or the solicitation of an offer to buy a security and the name and address from whom a prospectus can be obtained;

(b) Customary quarterly, annual and other periodic reports to security holders, proxy statements, dividend notices, and similar documents that are routinely sent to security owners; and

(c) The prospectus included in the registration statement filed with the Commissioner relating to such offering of securities.

Authority: O.C.G.A. Secs. 10-5-23, 10-5-70, 10-5-74.

**SYNOPSIS AND MAIN FEATURES OF PROPOSED RULE 590-4-3-.13 ENTITLED  
“ESCROW AND IMPOUNDMENT OF PROCEEDS” BY THE COMMISSIONER OF  
SECURITIES OF THE OFFICE OF THE GEORGIA SECRETARY OF STATE**

Synopsis:

The purpose for adopting Rule 590-4-3-.13 is to provide a rule to better reflect the realities of current financial, commercial and regulatory principles and practices affecting the securities markets. This rule sets forth certain conditions for issuers of securities where the issuer has not had any substantial gross revenues from the sale of products or services or any substantial net income for the three years prior to issuing the securities. Escrow and impoundment of proceeds from the sale of securities applies only to a registration by qualification under Code Section 10-5-23 when the issuer of the securities falls within the types of issuers described in the rule.

Main Features:

Generally, an issuer may be required to escrow and impound proceeds from the sale of securities if the issuer has not had any substantial gross revenues from the sale of products or services or any substantial net income from any source for the previous three years and has not succeeded, or intend to succeed, to any business that has had substantial gross revenues from the sale of products or services, or any substantial net income from any source, for any fiscal year during the previous three years. The escrow agreement required by this rule must be filed with the Commissioner as an exhibit to the registration statement. The Commissioner may waive or modify the escrow and impoundment requirements of this rule if he/she determines that such requirements are not necessary to protect investors with respect to a particular issue of securities.

Text of Rule:

**590-4-3-.13 Escrow and Impoundment of Proceeds.**

(1) In any case where securities are to be registered for sale pursuant to Section 10-5-23 of the Act, and the issuer of such securities has not had any substantial gross revenues from the sale of products or services or any substantial net income from any source for any fiscal year ended during the past three years and has not succeeded, and does not intend to succeed, to any business that has had any substantial gross revenues from the sale of products or services, or any substantial net income from any source, for any fiscal year ended during the past three years, the following shall be required as conditions to registration:

(a) Except in an offering pursuant to an underwriting agreement under which no securities will be sold unless all securities to be offered are sold, pursuant to a written escrow agreement, the deposit into escrow of 100% of the proceeds from the sale of such registered securities until the amount deposited in such escrow equals or exceeds the amount referenced in the prospectus and approved by the Commissioner.

1. This escrow account shall be with a bank, trust company or other escrow agent approved by the Commissioner.

2. Until the escrow account contains the specified amount, the issuer shall cause 100% of the proceeds from the sale of such registered securities to be deposited directly into this account as soon as practicable after receipt. The escrow agreement may provide for disbursement to the issuer of up to 15% of the amount deposited until the specified amount is paid in.

3. The escrow agreement shall provide that if the escrow account does not contain the specified amount on the specified date no later than one year after the effective date of the registration, then all amounts contained in the escrow account, including all interest earned thereon, if any, shall be returned to the securities purchasers whose payments were deposited into the escrow account. The amount of repayment to each purchaser shall be determined by multiplying the fraction, the numerator of which is the amount of each such purchaser's payments that have been deposited into the escrow account and the denominator of which is the aggregate amount of all deposits of purchaser payments into the escrow account, by the aggregate amount contained in the escrow account immediately prior to the repayment.

4. If the offering proceeds are to be used for a specific purpose, including, but not limited to, the purchase of real or personal property, the escrow agreement shall provide that, upon termination of the escrow account, the escrow funds shall be paid over to the attorney who is to handle the purchase closing.

5. The escrow agreement shall provide that the funds held in escrow, when released, will be used for the specific purposes stated in the prospectus, or offering circular, filed as part of the registration statement required by the Act.

6. The escrow agreement shall provide that, upon termination of the escrow account and payout of the escrow funds, the escrow agent shall notify the Commissioner of the time of disbursement and to whom the funds were disbursed.

(b) The deposit in an escrow account beginning on or before the date of the registration statement's effectiveness and continuing for a period of one (1) year from the termination of the registration statement's effectiveness and any renewal thereof:

1. Any securities of the same class issued or transferred to a person who is an executive officer, director, general partner or affiliate of the issuer or to any other person authorized to sell such securities for the issuer, still beneficially owned by such person, except a dealer or limited dealer registered with the Commissioner and selling pursuant to an underwriting agreement that is disclosed in the prospectus delivered to each purchaser; or

2. Any securities of the same class as the securities registered that are to be issued to any person specified in subparagraph (1)(b)1.above, at a price below the proposed offering price of such securities or for a consideration other than cash.

(2) No interest in any security held in an escrow account provided for in paragraph (b) above shall be offered for sale, sold, assigned or transferred during the existence of such escrow account without the written consent of the Commissioner. The Commissioner may grant such consent when there has been a significant change of circumstances or to avoid an undue hardship, but only if he deems such consent consistent with the protection of investors.

(3) If the issuer intends to use the proceeds of an offering for a specific purpose or acquisition as stated in the prospectus or offering circular, and the issuer does not fall within the provisions of paragraphs (1)(a) or (1)(b) of this Rule, then the Commissioner may require the issuer to hold the proceeds of the offering in escrow until the funds reach the amount necessary to accomplish said purpose or acquisition. Said requirement by the Commissioner shall be based upon the provisions of Section 10-5-50 of the Act for the protection of investors.

(4) A final copy of any escrow agreement required by this Rule, signed by both the escrow agent and the issuer, shall be included as an exhibit to the registration statement filed with the Commissioner.

(5) The requirements of this Rule may be superseded or modified in writing by the Commissioner if he or she determines that such requirements are not necessary to protect investors with respect to a particular issue of securities.

Authority: O.C.G.A. Secs. 10-5-23, 10-5-24, 10-5-53, 10-5-70, 10-5-74.